IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

COPC No.3 of 2006.

Date of decision: 13.11.2007.

Akshay Doegar .....Petitioner

-Versus-

Kanwar Vijay Singh ....Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.R.L.Sood, Senior Advocate with Mr.Arjun Lal, Advocate.

For Respondent: Mr.Vijay Pandit, Advocate with Ms.Yogita Dutta, Advocate.

Deepak Gupta, J.(Oral)

The present contempt petition has been filed praying that action be taken against the respondent for having committed gross and willful criminal contempt of this Court.

The facts necessary for decision of this case are that the respondent alongwith his mother and brothers were owners of khasra No.233/C/8 old and new khasra No.983 measuring 218.00 sq.mtrs. in Chhota Shimla. Respondent alongwith his co-owners sold the plot in favour of one Sh.P.S.Verma vide sale deed dated 28.12.1977. Said Sh.P.S.Verma obtained permission to construct house on the said plot from the Town and Country Planning Department on 27.2.1992. Approval for construction was granted by the Government of Himachal Pradesh on 12.5.1993. Thereafter, it

appears that some proceedings were initiated by the respondent against Sh.P.S.Verma and Sh.P.S.Verma sold the property to the present petitioner on 3.8.1999. The present petitioner thereafter submitted building plan to construct a four storey house on the plot. Objections were raised by the Municipal authorities and thereafter the petitioner submitted fresh plan for constructing parking and two storeys.

According to the respondent the petitioner through his Architect submitted a plan purportedly signed by Sh.P.S.Verma after the death of Sh.P.S.Verma. The Municipal Corporation finally granted sanction vide communication dated 24.7.2002. Petitioner started raising construction as per the approved plan. Thereafter, the respondent filed civil Suit No.100-1 of 2002 praying for a permanent prohibitory injunction restraining the present petitioner from effecting or carrying on any type of building construction beyond or in excess of land comprised in khasra No.233/C/8 measuring 204 sq.yards and 2 sq.ft. The Municipal Corporation, Shimla was also made a party in the said suit and a prayer was made that the Municipal Corporation be directed to demolish the illegal construction raised by the petitioner. It was alleged in the suit that the petitioner had encroached upon some land belonging to the respondent and that the petitioner was in occupation of more land than was sold by the respondent and his co-sharers to Sh.P.S.Verma. Various other allegations were also made. An application for grant of stay was also filed with the suit. The suit and application was

contested by the petitioner. The application for grant of interim relief was dismissed by the Civil Court.

Thereafter, the respondent made complaints to various authorities and he filed CWP No.886 of 2003 in this Court. The main allegation was that Sh.P.S.Verma had expired on 3.4.2000 but still an application was made purportedly on behalf of Sh.P.S.Verma for approval of building plan. It was also prayed that the construction raised by respondent No.4 (present petitioner) be demolished.

Respondent herein, in the writ petition did not mention that he had filed a civil suit in the Court of Senior Sub Judge or that his application under Order 39 Rules 1&2 CPC had been rejected. In the writ petition interim relief was also prayed for but was not granted. Thereafter, the respondent filed another Civil Suit No.123/1 of 2004 praying for that the Municipal Corporation, Shimla should be restrained from granting civic amenities like water etc. to the building of the present petitioner. However, the petitioner was not made party to the Civil Suit. Even in this suit no reference was made to the earlier suit or to the Civil Writ petition.

During the pendency of the writ petition the first suit filed by him against the petitioner and the Municipal Corporation was dismissed as withdrawn on 24.3.2005. When the writ petition came up for hearing before this Court on 7.11.2005 it was heard by a Bench consisted of V.K.Jhanji & K.C.Sood, J.J. As is apparent from the subsequent order passed by V.K. Jhanji and Surjit Singh, J.J. on

9.12. 2005 in CMP No.2411 of 2005 the matter was argued at length on 7.11.2005 but when the Court did not agree and was proposing to impose heavy costs of Rs.40,000/- on the respondent, learned counsel for the respondent withdrew the writ petition. The order which was passed reads as follows:

> "Learned counsel for the petitioner states that writ petition may be dismissed as withdrawn. Order accordingly. However, while permitting the petitioner to withdraw the writ petition, we direct all the authorities concerned including Municipal Corporation and the Electricity Department to grant immediately electricity connection as well as water connection to respondent No.4 so that he can enjoy his property."

Thereafter, the respondent filed CMP No.2411 of 2005 on 23rd November, 2005 for recalling the order passed on 7.11.2005. the main allegation of the respondent was that his counsel had no authority to withdraw the writ petition. This application was filed through a new counsel. A Division Bench heard the counsel on the merits of the case and after hearing the parties dismissed the application with exemplary costs of Rs.50,000/-. This order was challenged by the respondent before the Apex Court but the special leave petition was rejected by the Apex Court on 13.2.2006.

After the decision of the writ petition of 7th November, 2005 and after filing CMP No.2411 of 2005 for recall of the said order, the respondent filed an application before the Commissioner, Municipal Corporation on 28th November, 2005, relevant portion of which reads as follows:

> "Re:CWP 886 of 2005
>
> I would like to bring to your notice that I had filed the above noted Civil Writ Petition in the year 2003, whereby it was highlighted that Shri

> Akshay Doegar, the owner of land bearing old khasra No.233/C/8 and new Settlement No.983, had received sanction accorded to him for carrying out construction in the said land from the competent authorities through fraud, forgery, deceit and misrepresentation of facts.
>
> In the above matter, reply was filed by the respective respondents and the matter was mature for hearing and final disposal.
>
> On 7th November, Mr.Rajiv Sharma, Senior Counsel, appearing on my behalf made a statement that "the writ petition may be dismissed as withdrawn." Hence the matter was dismissed as withdrawn by the Hon'ble High Court.
>
> However I am greatly aggrieved on account of this statement made by my counsel. He had no instruction from me, written oral or implied and his actions were in direct contradiction to my interests in the matter. Moreover the order for grant of water and electricity by the Hon'ble High Court was beyond the prayer of the writ petition.
>
> Consequently I have filed a complaint against Mr.Rajiv Sharma before the Hon'ble Chairman, Bar Council seeking action against him. Simultaneously I have also filed an application before the Hon'ble Double Bench requesting for a recall of the order and for a hearing and decision on merits.
>
> I request therefore that Status-quo be observed in the matter till the pending of my Application before the Hon'ble high Court."

The contention of the petitioner is that in view of the directions given by the Division Bench to the Municipal Corporation and the Electricity Department to grant immediate electricity connection and water connection to the present petitioner, this letter whereby the respondent prayed for grant of status quo till the decision on his application before the High Court is an abuse of the process of the Court. During the course of the hearing it has also been pointed out that despite the civil suit having been withdrawn and the writ petition having been dismissed the respondent herein continues to harass the present petitioner and is circumventing the

orders of this Court by filing proceedings before the Settlement Collector wherein he has again raised the question that the petitioner is legally entitled to hold only 204 sq.mts. and not 218 sq.mts. of land.

We have heard Sh.R.LSood, learned senior counsel for the petitioner at length. We have also gone through the observations made by the Division Bench in its order dated 9.12.2005 wherein the conduct of the present respondent has been castigated. The Court came to the conclusion that the writ petition was an abuse of the process of the Court and was absolutely malafide and baseless therefore costs of Rs.50,000/- were imposed. It would be pertinent to mention that the application filed by the respondent to the Commissioner dated 28th December, 2005 was also noticed by the Court in its order.

We do not approve of the conduct of the respondent in writing such a letter. He was totally ill-advised in sending such a letter. The best option for him would have been to approach this Court for stay of the order. The respondent should have realized that the orders passed by the High Court cannot be stayed by an executive officers who are bound to comply with the orders of the Court. However, we are of the view that though this letter may be ill-advised or improper but it definitely does not amount to contempt of the Court. The respondent appears to be a cantankerous litigant. He does not have the grace to accept the fact that he has lost in legal proceedings but this does not mean that he has to be punished for contempt of Court.

The writ petition filed by the respondent was dismissed. Directions were issued to the Electricity Department and the Municipal authorities to take certain actions. There is no willful disobedience of any direction, order or writ passed by this Court by the respondent. We are also of the view that this was not such an action which prejudices or interferes or tends to interfere with the due course of judicial proceedings. Directions have been issued to the Electricity Department and the Municipal authorities to take certain actions. There is no willful disobedience of any direction, order or writ passed by this Court by the respondent. The respondent in his letter had made reference to the orders of the Court and had prayed that since he has filed an application for recalling of the order status quo be maintained. Such a letter by no stretch of imagination can be said to amount to contempt of court.

The dismissal of the writ petition or the withdrawal of the suit, in our view, does not mean that the respondent cannot take any other legal action. It may be, that the said legal action must fail in view of the orders passed by this Court or by the Civil Court but the respondent cannot be pre-empted and prevented from taking recourse to legal action. He is well within its rights to approach the Settlement Officer. However, the Settlement Officer is bound by the orders passed by this Court and by the Civil Court. However, the fact that the respondent has approached the Settlement Officer does not amount to contempt of Court.

In view of the above discussion, we find that the respondent has committed no contempt and the notice issued to him is discharged.

(Deepak Gupta)
Judge

November 13, 2007
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(V.K. Ahuja),
Judge